

DAVID B. PERRY

IBLA 82-958

Decided September 21, 1982

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease application W 73622.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to commencement of the filing period.

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

The fact that an agent, rather than the applicant, failed to ensure that an oil and gas lease application was properly dated provides no basis for accepting the offer because such acceptance would have prejudiced the rights of others who properly executed their applications.

APPEARANCES: David B. Perry, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

David B. Perry has appealed the May 27, 1982, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneously filed oil and gas lease application W 73622 because its date did not reflect that it was signed within the filing period. The card was filed between November 3, 1980, and November 24, 1980--the filing period for the November drawing. Appellant's application, however, was dated September 23, 1980.

The regulation, 43 CFR 3112.2-1(c), states in part, "The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period."

Further, 43 CFR 3112.2-1(g) states, "The properly completed and signed lease application shall be filed in the proper office of the Bureau of Land Management."

[1] It is well established that a drawing entry card which is not properly dated in the space provided on the card must be rejected. Sorensen v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978), affg Walter M. Sorensen, 32 IBLA 345 (1977). Because appellant's application was dated prior to the filing period, the offer must be rejected. Leonard Thompson, 62 IBLA 236 (1982); Herbert W. Winston, 61 IBLA 199 (1982). Strict compliance with the regulations governing the drawing, 43 CFR Subpart 3112, is enforced to protect the rights of the second and third drawn qualified offerors. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, 544 F.2d 1067 (10th Cir. 1976). This regulation has been applied consistently since the current controlling regulation, 43 CFR 3112.2-1(c), became effective on June 16, 1980. 45 FR 35156 (May 23, 1980).

[2] In his statement of reasons, appellant asserts that he was misled by the filing service he employed, which had told him never to date the application cards, but only to sign them; that the filing service would fill in the date when the applications were filed. Therefore, he contends, since the error was made by his filing service (J & R Marketing Corp.), and not by him, he should be awarded the lease or, in the alternative, an amount of money equal to the value of the lease.

When the Department published its regulations governing the simultaneous oil and gas leasing system, it responded to a comment which objected to the penalizing of an applicant for the activities of the applicant's filing service: "This comment was rejected because an application that is illegally filed should be rejected, whether filed by an applicant or by an applicant's agent. An applicant is responsible for the actions of the agent (filing service) he/she chooses to [employ]." 45 FR 35156, 35160 (May 23, 1980). To hold otherwise would prejudice the rights of those who submitted proper applications. See Ballard E. Spencer Trust, Inc., supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Will A. Irwin
Administrative Judge

